REQUEST FOR PROPOSALS

FOR

BUILDING MANAGEMENT AND CATERING & CONCESSION SERVICES

For the

CONNECTICUT CONVENTION CENTER HARTFORD, CT

November 4, 2016

Key Dates:

November 15, 2016 – Pre-Bid Meeting

December 5, 2016 – Proposals Due

A Public Solicitation Made by the Capital Region Development Authority

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I. INTRODUCTION

The Capital Region Development Authority (the "Authority" or "CRDA") is seeking proposals from qualified and experienced firms interested in providing the following management, operational and promotional services for the Connecticut Convention Center in Hartford, Connecticut:

- a) Building Management; and
- b) Catering & Concession Services

It is CRDA's intention to enter into separate agreements with the selected firm for each of the services outlined above; however, we reserve the right to combine contractual services where appropriate.

Contact Information

The official contact person for the purposes of this RFP is

Ms. Jennifer Gaffey Capital Region Development Authority 100 Columbus Boulevard, Suite 500 Hartford, CT 06103-2819

Telephone: (860) 527-0100 Email: jgaffey@crdact.net

All communications with CRDA regarding this RFP must be directed to Ms. Gaffey.

All communications with CRDA or any person representing CRDA concerning this RFP are strictly prohibited, except as permitted by this RFP. Any violation of this prohibition by respondents or their representatives may result in disqualification or other sanctions, or both.

Letter of Intent

Interested firms should submit a letter of intent to Ms. Gaffey by **Wednesday**, **November 9, 2016** acknowledging receipt of the RFP and informing CRDA of its intent to respond. Firms should also provide the name, address, telephone, email address and facsimile number of the individual who can address inquiries related to this RFP and the firm's proposal, and receive clarifications or addenda.

Pre-Bid Meeting

Firms are strongly encouraged to attend the pre-bid meeting scheduled for **Tuesday**, **November 15, 2016 at 10:00 AM** in the conference room at the Connecticut Convention Center, 100 Columbus Boulevard, 5th floor in Hartford. (Please note that this date is

subject to modification: however, all potential respondents will be duly advised of such within an ample time period to adjust schedules if such should occur). The purpose of this meeting will be to answer any questions pertaining to the proposal documents and to tour the facility.

Questions and Amendments

All questions regarding this RFP and submission requirements must be directed, in writing, to the Official Contact by **Friday**, **November 18**, **2016**. Written responses to all questions will be posted by **Monday**, **November 28**, **2016** on the CRDA Web site at www.crdact.net.

Any amendments to this RFP will be posted on CRDA's Web site and respondents are advised to periodically check the site.

Additional Information

Supplemental materials to assist respondents in preparing their proposals are also available on the CRDA Web site at www.crdact.net.

These materials include:

- 1. CRDA Annual Reports, including Convention Center financial reports
- 2. Convention Center facility description, site plan and financial reports.
- 3. Current Mangement Services agreement for the Convention Center.
- 4. Current Catering & Concessions agreement for the Convention Center

Additional information on the Convention Center is also available on that facility's Web site at: www.ctconventions.com.

Proposal Deadline

Proposals submitted in response to this RFP must be submitted by 5:00 p.m. Eastern time on Monday, December 5, 2016.

Presentation

Short-listed respondents should be prepared to attend individual presentations during the week of **December 12 -16, 2016** at the Connecticut Convention Center. The exact time and room will be announced at a later date.

II. PROJECT DESCRIPTION

The Convention Center, which opened in 2005, is the largest, full-service convention facility between New York and Boston. The 540,000 square foot facility includes a 140,000 square foot exhibit hall, a 40,000 square foot ballroom and 25,000 square feet of meeting space. It is owned by the Capital Region Development Authority ("CRDA"), a quasi-public agency of the State of Connecticut.

The Convention Center is the anchor of the Adriaen's Landing district, a \$775 million mixed-use development located along Hartford's riverfront. The development includes the Connecticut Science Center, the Hartford Marriott Downtown, parking facilities, an entertainment/ restaurant component (the "Front Street District") and opening in July of 2017, the University of Connecticut – Hartford Campus.

Presently, CRDA holds separate contracts with one manager for both the building management services for the Convention Center ("Management Services") and for its catering and concessions services ("Catering & Concessions Services"). The Management and Catering & Concessions employees at the Convention Center currently work under a collective bargain agreement; however, all parties are encouraged to respond to this RFP.

The Convention Center currently attracts and serves annually:

- Leisure visitors
- Motor coaches
- Conventions
- Meetings
- Banquets
- Sporting Events
- Consumer shows
- Events

The Convention Center aggressively pursues the following markets:

- Leisure
- Group tours
- Association business
- Corporate
- Government
- SMERF (Society, Military, Educational, Religious, and Fraternal)
- Special events

Additional information on the Connecticut Convention Center can be found at www.ctconventions.com.

III. SCOPE OF SERVICES

A. Building Management

The firm selected to provide building management services shall be prepared to perform its obligations in a prompt, diligent and professional manner consistent with other first-class public convention centers.

Respondents should have at least three (3) years of successful experience as sole and exclusive building manager in comparable convention centers, and/or other major public or private event venues with gross sales of at least four million dollars (\$4,000,000) or more per year per any one facility operated for the past five years.

CRDA expects the following standards to be achieved in managing the Convention Center:

Management – The selected firm shall provide professional management for all aspects of Convention Center operations. Resources should be expended efficiently and effectively, ensuring that the Convention Center and its assets are well maintained, in good order, clean, safe, and secure. Contractor shall work with CRDA to integrate Convention Center operations with other elements of Adriaen's Landing, including the performance of minor maintenance within the Front Street District.

Transition – Develop and implement a short-term transition plan from the current management to the new manager.

Corporate Services - Provide corporate services including procedures, systems and manuals relating to accounting and fiscal controls, operating procedures, purchasing, employment and training manuals and materials, personnel practices and similar matters.

Booking – Contractor will be responsible for booking and scheduling of all events held at the Convention Center. All bookings and scheduling of events shall be in accordance with a Booking Policy approved by CRDA.

Sales and Marketing Plan: The selected contractor shall serve as the Designated Marketing Agent for the Convention Center and shall develop a sales and marketing plan for the promotion of conventions, conferences, trade shows, corporate meetings, exhibitions and sporting events for the Convention Center. Such plan should identify vertical and niche markets that are ideal for the Hartford markets such as health care, financial services, insurance and technology.

Familiarization Tours: The selected contractor shall arrange familiarization ("FAM") tours of the Hartford area and the convention center facilities for key decision makers of various targeted organizations.

Sponsorship - Contractor shall develop and recommend to CRDA for its approval a program for the sale of branding rights, pouring rights and other promotional tie-ins and trade-outs which shall state the objectives and establish guidelines for such arrangements. In all cases, such guidelines shall be designed to ensure that such arrangements benefit CRDA by increasing Operating Revenues, reducing Operating Expenses or both.

Customer Services - Provide a high level of quality service to clients, exhibitors, and patrons of the Convention Center. Establish operational policies and vendor contracts to provide for all aspects of client and exhibitor event-related requirements.

Contract Negotiation/Administration - Negotiate and/or administer contracts for vendor-provided services. Services may include, but are not limited to, food services, sales and marketing, event staffing, security, electrical and utility services, telecommunication and data services, housekeeping, grounds keeping, parking, box office, and business center. All subcontracts shall be subject to review and approval by CRDA.

Revenue Opportunities: Assist CRDA in identifying and realizing new revenue opportunities.

Quality Control - Establish procedures to ensure that the selected building management firm and its subcontractors provide high-quality services.

Fiscal Services – Maintain all financial records, funds, and accounts in accordance CRDA accounting requirements; prepare monthly operational and capital reports and budgets. The selected firm will be expected to provide monthly projections on the annual operation expenses and revenues and to make every effort possible to maximize revenues and minimize expenses. CRDA shall have total access to all financial records related to this facility at all times.

Reporting and Accountability

The selected firm shall maintain and provide monthly sales reports on all leads and booked business, including, but not limited to:

- A monthly analysis of space use by market segment.
- A monthly analysis of projected sales versus actual sales.
- A calendar of all booked business shall be maintained and accessible to CRDA.
- The selected firm(s) shall also provide an annual report to CRDA on sales, revenues, expenses, and overall performance for each facility.

Operational Services

The selected firm shall be required to perform the operational services listed below:

- Public relations, advertising, and promotional coordination
- Contract negotiation and administration.
- Coordination of event schedule in collaboration with event booking firm(s).
- Event coordination, production, staffing, and servicing.
- Facility operation and maintenance.
- Human resource, fiscal, and payroll services.
- Ancillary operational requirements provided within the current Management Agreement.

Media Relations: Assist CRDA in answering inquiries of news and entertainment media regarding upcoming Convention Center events and arranging for media access to events where allowed.

Security: Provide security services during events and at such times when the Convention Center is not in use. Tasks shall include cooperating with and assisting appropriate State and local public safety authorities with respect to the planning and implementation of the facility's security plan. The selected firm shall also be responsible for compliance with all applicable statutes, rules, regulations and orders of the Connecticut Departments of Homeland Security and Public Safety applicable to Convention Center operations.

Small and Minority Business Utilization: The selected firm shall assist CRDA in meeting statutory requirements (C.G.S. §4a-60g) with respect to the hiring of State-certified small and minority-owned businesses at the Convention Center. Tasks shall include quarterly reporting to CRDA on Convention Center utilization of such businesses.

Other Employment Preferences: The selected firm shall assist CRDA in meeting statutory requirements (C.G.S. §32-656) with respect to available and qualified residents of Hartford, as well as available and qualified members of minorities.

Web site: The selected firm shall be responsible for maintaining and updating the Convention Center's Web site.

Inventory: The selected firm shall be responsible for maintenance of a personal property inventory at the Convention Center in accordance with CRDA requirements.

Cooperation: The selected firm will be expected to provide close cooperation with the selected garage parking facilities manager, as well as, the Marriott hotel manager.

Other: The selected firm shall be responsible for any other services or activities incidental to the normal and professional operation of the Convention Center or as otherwise requested by CRDA.

B. Catering and Concessions

In providing Catering and Concession Services at the Convention Center, the selected firm shall be expected to provide the following services:

Management: The Catering and Concessions Services provider is responsible for providing food and beverage services at the Convention Center. Specific duties include, but are not limited to:

- (a) the sale of food and beverages, including alcoholic and non-alcoholic beverages, and candy sold from concession stands, kiosks, fast food stands, bars, vending machines, portable service stands and via wait service and vendors circulating through the facility;
- (b) the catering or sale of food and beverage services and related services within the facility; and
- (c) the sale or rental of novelties, other merchandise and programs within the facility, including the coordination, management, inventorying, scheduling and provision of food and beverages for both banquet and concession operations, catering all events at the facilities, including set-up, tear-down and clean-up, menu development and merchandising, vending machine services, coat and luggage check, room service, booth service, thematic food service and the provision of the personnel necessary to provide the food services.

Contractor shall apply for and purchase all required alcoholic beverage licenses required to provide concession services for the facility. Catering and Concession Services shall include, but not be limited to, ordering, receiving, inventorying and storing all food and beverage products, supplies and equipment; preparing all food and beverages; providing all food and beverage service to guests; cleaning all areas used to prepare and serve food and beverage; and such other services as may be customary, appropriate, necessary and incidental to the provision of the Food Services.

Proposers should be aware that the Convention Center enjoys a reputation for providing a high level of food/beverage quality and service to its distinguished lists of patrons.

Bidders should note that CRDA requires that any contract for building management services or catering and concessions services for the Convention Center be in a form that satisfies the requirements of IRS Procedure 97-13 as it relates to management contracts for facilities financed with tax-exempt bond proceeds. A summary of this Procedure, provided by the State's bond counsel, appears in Appendix I.

IV. SUBMITTAL REQUIREMENTS

The proposer shall complete and submit one (1) original and five (5) copies of its proposal documents. All submissions must follow the required format and address all requirements listed in the prescribed order using the prescribed numbering system. Failure to follow the required format may result in disqualification of a submission.

Section 1 – Table of Contents

Proposers must include a Table of Contents that lists sections and subsections with page numbers that follow the organization and sequence for this submission as required.

<u>Section 2 – Organizational Profile</u>

- a. <u>Qualifications</u>. Describe how your experience or special knowledge, skills or abilities meet CRDA's needs as outlined in this RFP.
- b. <u>Summary of Relevant Experience</u>. Provide a listing of comparable facilities for which the proposer currently provides Building Management and Catering & Concession Services or has provided such services within the last three (3) years. Additionally, provide detailed information on the type of facility, annual attendance and scope of services provided. Include name, title, address, telephone, facsimile number and email address of the client contact or contract administrator.

Provide a comprehensive list of contracts that have not been renewed with your firm since 2011. Include name, physical address, and type of facility, plus the name, title, address, telephone, facsimile number and email address of the client contact or contract administrator.

- c. <u>Organization Chart</u>. Data describing the proposing firm's current organization date of incorporation, ownership, corporate office, number of years in business, size of business, services offered, operating philosophy and financial performance. Provide a diagram showing the hierarchical structure of functions and positions within the organization.
- d. <u>Financial Condition</u>. If the respondent is a firm or corporation, include the three (3) most recent annual financial statements prepared by an independent Certified Public Accountant, and reviewed or audited in accordance with Generally Accepted Accounting Principles (USA). If the submission has been in business for less than three (3), such respondent must include any financial statements prepared by a Certified Public Accountant, and reviewed or audited in accordance with Generally Accepted Accounting Principles (USA) for the entire existence of such firm or corporation.

e. <u>References</u>. Include the names of references that have contracted with the respondent for building management and catering & concession services. Provide the following information for each reference: name, title, name of organization, address and telephone number, as well as a brief description of the services provided if they are not included in the Summary of Relevant Experience.

Section 3 – Conflict of Interest

Please discuss any competing facilities connected to the proposer. Include any facilities in the State of New York or the greater New England region, regardless of size, and any facilities anywhere in the United States that are of such size or in such market as to compete with the Convention Center for booking events. Present a plan for preventing any conflict of interest in managing competing facilities.

Section 4 – Overall Management Plan

- Describe how the Convention Center will be managed. Describe your firm's understanding of CRDA's project goals for the Convention Center and how your firm will achieve them.
- High-quality service and unique experience are essential to user satisfaction. Describe the experience your firm will provide users of the Convention Center.
- Describe (1) how the management function will be organized including information on the onsite management team; (2) how the management team will report to CRDA, including format and frequency; and (3) the functions performed by your management team.
- Describe how the staff will be recruited, organized, and trained. Provide the listing of number and titles of full-time employees used in the operation of the facility. Please be specific about the proposed start dates (in general) for key staff members including the General Manager, the Business Manager, the Lead Event Coordinator, and other manager.
- Describe the proposed approach to the overall operational plan. Propose an organizational chart for the facility showing divisions, departments, manager titles, and worker classifications. The chart should show the direct reporting relationships of the facility to CRDA. The chart should include and identify anticipated subcontractors, to the extent possible.
- The Convention Center enjoys a reputation for providing a high level of food/beverage quality and service to its distinguished lists of patrons. Describe the proposed approach for providing Catering and Concessions services outlined in Section III(B) of this RFP and to ensure the "highest quality" in food service.

Section 5A – Building Services Management Fee/Term

- <u>Fixed Management Fee.</u> In consideration of manager's performance of its services hereunder, Owner shall pay manager a Fixed Management Fee equal to \$ ______ per year. The base management fee will be payable by the CRDA to the manager, monthly in arrears.
- <u>Incentive Fee</u>. In addition, an incentive management fee will be available to the manager during the each contract year equal to the greater of (i) the sum of the amounts of the "Revenue Increase" and (ii) the "Expense Reduction" provided, however, that in no event shall the total of incentive fee exceed 100% the base management Fee (percentages and dollar amount of incentive fee must be in compliance with IRS Revenue Procedure 97-13, See Appendix A).

Section 5B – Catering & Concession Services Management Fee

- <u>Fixed Management Fee</u>. In consideration of manager's performance of its services hereunder, Owner shall pay manager a Fixed Management Fee equal to \$ ______ per year. The base management fee will be payable by the CRDA to the manager, monthly in arrears.
- Incentive Fee. In addition, an incentive management fee will be available to the manager during the each contract year equal to the greater of (i) the sum of the amounts of the "Revenue Increase" and (ii) the "Expense Reduction" provided, however, that in no event shall the total of incentive fee exceed 100% the base management Fee (percentages and dollar amount of incentive fee must be in compliance with IRS Revenue Procedure 97-13, See Appendix A).

The Incentive Management Fees shall be paid annually by CRDA in arrears, shall be invoiced at the end of each agreement year after audit and shall be paid within thirty (30) days of audit reconciliation; however, efforts shall be made to complete the annual audit within ninety (90) days of the end of the agreement year.

Section 6 – Additional Data

Provide any additional information, alternate fee proposals, or alternative contract durations, which the respondent wishes to bring to the attention of CRDA that is relevant to this RFP.

Section 7 – CRDA Forms

Exhibit A – Contract Compliance Package

Exhibit B* - CT Non-Discrimination Certification

Exhibit C*- CT Gift and Campaign Contribution Certification

Exhibit D* - CT Consulting Agreement Affidavit

Exhibit E* - CT SEEC Form 10

V. SELECTION CRITERIA

CRDA desires to employ the best-qualified firm or firms who in its opinion will continuously provide top-quality service, and product quality. As such, these criteria will be most important in the final selection process, and the right is reserved by CRDA to reject all proposals or any proposal for whatever reason including non-conformance with the proposal document formats as requested. The final decisions made by CRDA will be made in its overall best interests.

The following criteria shall be those utilized in the selection process. They are presented as a guide for the respondent in understanding CRDA's requirements and expectations for this project and are not necessarily presented in order of importance.

Proposals will be evaluated based upon the following criteria.

- The business organization of the proposer, including financial history;
- Experience with comparable facilities of similar size and with similar service requirements as the Convention Center and the Hartford market.
- Key Personnel;
- Experience with publically financed facilities;
- Financial terms of the proposal
- Demonstrated commitment to affirmative action

^{*}Please see RFP Web site

VI. SELECTION SCHEDULE

ELEMENT	COMPLETED BY
RFP Packages to Proposers	November 4, 2016
Letters of Intent due	November 10, 2016
Pre-bid meeting with proposers	November 15, 2016
Questions due	November 18, 2016
Proposals due	December 5, 2016
Review of proposals and short list determined	December 7, 2016
Short list presentations	December 12-16, 2016
Review and selection	December 22, 2016
Negotiation/letter of intent to contract	December 28, 2016

Proposals submitted in response to this RFP must be submitted by <u>5:00 p.m.</u> <u>Eastern time on December 5, 2016</u>.

Late submissions will not be accepted. CRDA shall not be responsible for misdirected or lost submissions.

No additions or changes to the original submission will be allowed after submittal. CRDA reserves the right, at its sole and absolute discretion, to request clarification or amplification of any information submitted under RFP process. CRDA, at its sole and absolute discretion, may allow respondents the opportunity to submit any missing information. Any costs or expenses associated with such requests shall be the sole responsibility of the respondent.

VII. RIGHTS RESERVED TO CRDA

CRDA reserves the right to award in part, to reject any and all submittals in whole or in part for misrepresentation or if the respondent is in default of any prior State contract, or if the bid or submission limits or modifies any of the terms and conditions and/or specifications of the RFP. CRDA also reserves the right to waive technical defect, irregularities and omissions if, in its judgment, the best interest of CRDA would be served.

CRDA reserves the right to correct inaccurate awards resulting from clerical errors. This may include, in extreme circumstances, revoking the awarding of a contract already made to a respondent and subsequently awarding the contract to another respondent. Such action on the part of CRDA shall not constitute a breach of contract on the part of CRDA since the contract with the initial respondent is deemed to be void ab initio and of no effect as if no contract ever existed between CRDA and the proposer.

CRDA reserves the right to reject any and all proposals, to waive formalities, and to select the proposal and firm(s) that, in the CRDA's sole discretion, is in the best interests of CRDA.

1. CRDA reserves the right to:

- a. Amend, modify, or withdraw this RFP;
- b. Revise any requirements under this RFP;
- c. Require supplemental statements of information from any respondent;
- d. Extend the deadline for submission of responses hereto;
- e. Negotiate or hold discussions with any bidder to correct insufficient responses that do not completely conform to the instructions and contained herein;
- f. Waive any nonconformity with this RFP;
- g. Request additional information or clarification of information provided in the response without changing the terms of the RFP;
- h. Waive any portion of the selection process in order to accelerate the selection and negotiation with the top-ranked firm(s);

CRDA may exercise the foregoing rights at any time without notice and without liability to any bidder, or any other party, for expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expenses of the bidder.

- 2. Nothing stated at any time, by any representative of CRDA, will effect a change in, or constitute an addition to, this RFP unless confirmed in writing by CRDA;
- 3. Firms responding hereto must agree to keep confidential their responses and any information received from CRDA;

- 4. CRDA shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from an authorized representative of CRDA;
- 5. Neither CRDA nor any of its officers, agents, consultants, or employees shall be responsible for the accuracy of any information provided as part of this RFP (including appendices). All respondents are encouraged to independently verify the accuracy of any information provided. The use of this information in the preparation of a response to the RFP is at the sole risk of the respondent;
- 6. All responses submitted must be the original work product of the respondent. The copying, paraphrasing, or other use of substantial portions of the work product of another respondent is not permitted. Failure to adhere to this instruction will cause CRDA to reject the response.

VIII. RFP CONDITIONS

- A. CRDA is an Equal Opportunity and Affirmative Action employer and does not discriminate in its hiring, employment, or business practices. CRDA is committed to complying with the Americans with Disabilities Act of 1990 (ADA) and does not discriminate on the basis of disability, in admission to, access to, or operation of its programs, services, or activities.
- B. All submissions in response to this RFP are to be the sole property of CRDA. Respondents are encouraged **NOT** to include in their submissions any information that is proprietary. All materials associated with this procurement process are subject to the terms of State laws defining freedom of information and privacy and all rules, regulations and interpretations resulting from those laws. The Connecticut Freedom of Information Act (FOIA) generally requires the disclosure of documents in the possession of CRDA upon request of any citizen, unless the content of the document falls within certain categories of exemption. An example of an exemption is a "trade secret," as defined by Connecticut General Statutes Section 1-210(b)(5)(A). Confidential information must be separated and isolated from other material in the submission and labeled **CONFIDENTIAL** and enclosed in a separate envelope.

If the respondent indicates that certain documentation, as required by this RFP, is submitted in confidence, by specifically and clearly marking said documentation as **CONFIDENTIAL**, CRDA will endeavor to keep said information confidential to the extent permitted by law. CRDA, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information pursuant to a FOIA request. As set forth below, the respondent has the burden of establishing

the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall CRDA or any of its staff have any liability for disclosure of documents or information in the possession of CRDA which CRDA or such staff believes to be required pursuant to the FOIA or other requirements of law.

IMPORTANT NOTE: If the information is not readily available to the public from other sources and the respondent submitting the information requests confidentiality, then the information generally is considered to be "given in confidence." A convincing explanation and rationale sufficient to justify each exemption from release consistent with C.G.S. § 1-210(b) shall be prepared by the respondent and shall accompany the submission. The rationales and explanation shall be simply stated in terms of the prospective harm to the competitive position of the respondent that would result if the identified information were to be released, and you shall state the reasons why you believe the materials are legally exempt from release pursuant to C.G.S. § 1-210(b).

- C. Any product, whether acceptable or unacceptable, developed under a contract awarded as a result of the RFP is to be the sole property of CRDA.
- D. Timing and sequence of events resulting from this RFP will ultimately be determined by CRDA.
- E. The respondent's submission shall remain valid for a period of 180 days after the closing date for the submission and may be extended beyond that time by mutual agreement.
- F. All proposed costs must be fixed through the period of the agreement. No cost submissions that are contingent on a CRDA action will be accepted.
- G. CRDA may amend or cancel this RFP or modify the schedule, prior to the due date and time, if CRDA deems it to be necessary, appropriate or otherwise in the best interests of CRDA. Failure to acknowledge receipt of amendments, in accordance with the instructions contained in the amendments, may result in a firm's submission not being considered.
- H. CRDA retains the right to choose more than one respondent to enter into a process of competitive negotiation. It further reserves the right to reject any and all submissions from any or all respondents and to republish the RFP.
- I. Any costs and expenses incurred by respondents in preparing or submitting submissions are the sole responsibility of the respondent.
- J. A respondent must be prepared to present evidence of experience, ability, service facilities, and financial standing necessary to satisfactorily meet the requirements set forth or implied in the submission.

- K. No additions or changes to the original submission will be allowed after submission. While changes are not permitted, clarification of submissions may be required by CRDA at the respondent's sole cost and expense.
- L. Respondents may be asked to give demonstrations, interviews, presentations or further explanation to the RFP Selection Committee.
- M. The respondent represents and warrants that the submission is not made in connection with any other respondent and is in all respects fair and without collusion or fraud. The respondent further represents and warrants that they did not participate in any part of the RFP development process, had no knowledge of the specific contents of the RFP prior to its issuance, and that no agent, representative or employee of the CRDA participated directly in the respondent's submission preparation.
- N. All responses to the RFP must conform to this instruction. Failure to include any required signatures, provide the required number of copies, meet deadlines, answer all questions, follow the required format, or failure to comply with any other requirements of this RFP may be considered appropriate cause for rejection of the response.
- O. This RFP is not an offer and neither this RFP nor any subsequent discussions shall give rise to any commitment on the part of CRDA or confer any rights on any respondent unless and until a contract is fully executed by the necessary parties. The contract document will represent the entire agreement between the respondent and CRDA and will supersede all prior negotiations, representations or agreements, alleged or made, between the parties. CRDA shall assume no liability for payment of services under the terms of the contract until the successful respondent is notified that the contract has been accepted and approved by CRDA. The contract may be amended only by means of a written instrument signed by CRDA and the respondent.
- P. Pursuant to C.G.S. § 4a-81, bids or submissions for state contracts with a value of \$50,000 or more in a calendar or fiscal year, excluding leases and licensing agreements of any value, shall include a **Consulting Agreement Affidavit** attesting to whether any consulting agreement has been entered into in connection with the bid or submission. Such affidavit shall be required if any duties of the consultant included communications concerning business of such State agency, whether or not direct contact with a State agency, State or public official or State employee was expected or made. As used herein "consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or

administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information or (C) any other similar activity related to such contract. Consulting agreement does not include any agreements entered into with a consultant who is registered under the provisions of Chapter 10 of the general statutes as of the date such affidavit is submitted in accordance with the provisions of C.G.S. § 4a-81.

- Q. Pursuant to C.G.S. § 1-101qq, bids or submissions for a large state construction or procurement contract shall include an Affirmation of Receipt of Summary of State Ethics Laws affirming that the key employees of such respondent have received, reviewed and understand the Summary and agree to comply with the provisions of the State ethics laws. "Large state construction or procurement contract" means any contract, having a cost of more than five hundred thousand dollars, for (A) the remodeling, alteration, repair or enlargement of any real asset, (B) the construction, alteration, reconstruction, improvement, relocation, widening or changing of the grade of a section of a state highway or a bridge, (C) the purchase or lease of supplies, materials or equipment, as defined in C.G.S. § 4a-50, or (D) the construction, reconstruction, alteration, remodeling, repair or demolition of any public building. Furthermore, pursuant to Pursuant to C.G.S. § 1-101qq, the respondent shall incorporate and include the Summary in all contracts with any subcontractor or consultant working or assisting the Contractor with the large state construction or procurement contract. respondent shall require in said contracts that the key employees of any subcontractor or consultant affirm that they have received, reviewed and understand the Summary and agree to comply with the provisions of the State ethics laws. The respondent shall supply such affirmations to CRDA promptly.
- R. CRDA is exempt from the payment of excise, transportation, and sales taxes therefore such taxes must not be included in the price quoted. Also, the price quoted will be applicable to the entire term of the contract and will not be subject to alterations without the prior written consent of CRDA.
- S. The bidder must certify that the personnel identified in its response to this RFP will be the persons actually assigned to the project. Any additions, deletions or changes in personnel from the proposal during the course of the project must be approved by CRDA, with the exception of personnel who have terminated employment. Replacements for personnel who have terminated employment are subject to approval by CRDA. At its discretion, CRDA may require the removal and replacement of any of the bidder's personnel who do not perform adequately, regardless of whether they were previously approved by such party.
- T. The proposer is willing furnish a facility bond and a performance bond if required by CRDA.

EXHIBIT A

CONTRACT COMPLIANCE PACKAGE

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

CONTRACT COMPLIANCE REGULATIONS NOTIFICATION TO BIDDERS

The contract to be awarded is subject to contract compliance requirements mandated by Sections 4a-60 and 4a-60a of the Connecticut General Statutes; and, when the awarding agency is the State, Sections 46a-71(d) and 46a-81i(d) of the Connecticut General Statutes. There are Contract Compliance Regulations codified at Section 46a-68j-21 through 43 of the Regulations of Connecticut State Agencies, which establish a procedure for awarding all contracts covered by Sections 4a-60 and 46a-71(d) of the Connecticut General Statutes.

According to Section 46a-68j-30(9) of the Contract Compliance Regulations, every agency awarding a contract subject to the contract compliance requirements has an obligation to "aggressively solicit the participation of legitimate minority business enterprises as bidders, contractors, subcontractors and suppliers of materials." "Minority business enterprise" is defined in Section 4a-60 of the Connecticut General Statutes as a business wherein fifty-one percent or more of the capital stock, or assets belong to a person or persons: "(1) Who are active in daily affairs of the enterprise; (2) who have the power to direct the management and policies of the enterprise; and (3) who are members of a minority, as such term is defined in subsection (a) of Section 32-9n." "Minority" groups are defined in Section 32-9n of the Connecticut General Statutes as "(1) Black Americans . . . (2) Hispanic Americans . . . (3) persons who have origins in the Iberian Peninsula . . . (4)Women (5) Asian Pacific Americans and Pacific Islanders; (6) American Indians . . ." An individual with a disability is also a minority business enterprise as provided by Section 4a-60g of the Connecticut General Statutes. The above definitions apply to the contract compliance requirements by virtue of Section 46a-68j-21(11) of the Contract Compliance Regulations.

The awarding agency will consider the following factors when reviewing the bidder's qualifications under the contract compliance requirements:

- (a) the bidder's success in implementing an affirmative action plan;
- (b) the bidder's success in developing an apprenticeship program complying with Sections 46a-68-1 to 46a-68-17 of the Administrative Regulations of Connecticut State Agencies, inclusive;
- (c) the bidder's promise to develop and implement a successful affirmative action plan;
- (d) the bidder's submission of employment statistics contained in the "Employment Information Form", indicating that the composition of its workforce is at or near parity when compared to the racial and sexual composition of the workforce in the relevant labor market area; and
- (e) the bidder's promise to set aside a portion of the contract for legitimate minority business enterprises. <u>See</u> Section 46a-68j-30(10)(E) of the Contract Compliance Regulations.

This form is **MANDATORY** and must be completed, signed, and returned with the vendor's bid.

ACKNOWLEDGMENT OF CONTRACT COMPLIANCE NOTIFICATION TO BIDDERS

INSTRUCTION: Bidder must sign acknowledgment below, and return this form to the awarding agency with the bid proposal.

The undersigned duly authorized representative of the bidding vendor acknowledges receiving and reading a copy of the **NOTIFICATION TO BIDDERS.** (*Please print name under signature line.*)

		Signature		
-		Title		
	-	Date		
		On behalf o	f:	
		Vendor Nan	ne	
		Street Addre	SS	
City			State	Zip
	Federal l	Employee Identifi (FEIN/SSN		nber

This form is **MANDATORY** and must be completed, signed, and returned with the vendor's bid.

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES CONTRACT COMPLIANCE REGULATIONS NOTIFICATION TO BIDDERS

(Revised 09/17/07)

The contract to be awarded is subject to contract compliance requirements mandated by Sections 4a-60 and 4a-60a of the Connecticut General Statutes; and, when the awarding agency is the State, Sections 46a-71(d) and 46a-81i(d) of the Connecticut General Statutes. There are Contract Compliance Regulations codified at Section 46a-68j-21 through 43 of the Regulations of Connecticut State Agencies, which establish a procedure for awarding all contracts covered by Sections 4a-60 and 46a-71(d) of the Connecticut General Statutes.

According to Section 46a-68j-30(9) of the Contract Compliance Regulations, every agency awarding a contract subject to the contract compliance requirements has an obligation to "aggressively solicit the participation of legitimate minority business enterprises as bidders, contractors, subcontractors and suppliers of materials." "Minority business enterprise" is defined in Section 4a-60 of the Connecticut General Statutes as a business wherein fifty-one percent or more of the capital stock, or assets belong to a person or persons: "(1) Who are active in daily affairs of the enterprise; (2) who have the power to direct the management and policies of the enterprise; and (3) who are members of a minority, as such term is defined in subsection (a) of Section 32-9n." "Minority" groups are defined in Section 32-9n of the Connecticut General Statutes as "(1) Black Americans . . . (2) Hispanic Americans . . . (3) persons who have origins in the Iberian Peninsula . . . (4)Women . . . (5) Asian Pacific Americans and Pacific Islanders; (6) American Indians . . ." An individual with a disability is also a minority business enterprise as provided by Section 4a-60g of the Connecticut General Statutes. The above definitions apply to the contract compliance requirements by virtue of Section 46a-68j-21(11) of the Contract Compliance Regulations.

The awarding agency will consider the following factors when reviewing the bidder's qualifications under the contract compliance requirements:

- (f) the bidder's success in implementing an affirmative action plan;
- (g) the bidder's success in developing an apprenticeship program complying with Sections 46a-68-1 to 46a-68-17 of the Administrative Regulations of Connecticut State Agencies, inclusive;
- (h) the bidder's promise to develop and implement a successful affirmative action plan;
- (i) the bidder's submission of employment statistics contained in the "Employment Information Form", indicating that the composition of its workforce is at or near parity when compared to the racial and sexual composition of the workforce in the relevant labor market area; and
- (j) the bidder's promise to set aside a portion of the contract for legitimate minority business enterprises. See Section 46a-68j-30(10)(E) of the Contract Compliance Regulations.

INSTRUCTIONS AND OTHER INFORMATION

The following BIDDER CONTRACT COMPLIANCE MONITORING REPORT must be completed in full, signed, and submitted with the bid for this contract. The contract awarding agency and the Commission on Human Rights and Opportunities will use the information contained thereon to determine the bidders compliance to Sections 4a-60 and 4a-60a CONN. GEN. STAT., and Sections 46a-68j-23 of the Regulations of Connecticut State Agencies regarding equal employment opportunity, and the bidder's □□good faith efforts to include minority business enterprises as subcontractors and suppliers for the work of the contract.

1) Definition of Small Contractor

Section 4a-60g CONN. GEN. STAT. defines a small contractor as a company that has been doing business under the same management and control and has maintained its principal place of business in Connecticut for a one year period immediately prior to its application for certification under this section, had gross revenues not exceeding ten million dollars in the most recently completed fiscal year, and at least fifty-one percent of the ownership of which is held by a person or persons who are active in the daily affairs of the company, and have the power to direct the management and policies of the company, except that a nonprofit corporation shall be construed to be a small contractor if such nonprofit corporation meets the requirements of subparagraphs (A) and (B) of subdivision 4a-60g CONN. GEN. STAT.

MANAGEMENT: Managers plan, organize, direct, and control the major functions of an organization through subordinates who are at the managerial or supervisory level. They make policy decisions and set objectives for the company or departments. They are not usually directly involved in production or providing services. Examples include top executives, public relations managers. managers of operations specialties (such as financial, human resources, or purchasing managers), and construction and engineering managers.

BUSINESS AND FINANCIAL OPERATIONS: These occupations include managers and professionals who work with the financial aspects of the business. These occupations include accountants and auditors, purchasing agents, management analysts, labor relations specialists, and budget, credit, and financial analysts.

MARKETING AND SALES: Occupations related to the act or process of buying and selling products and/or services such as sales engineer, retail sales workers and sales representatives including wholesale.

LEGAL OCCUPATIONS: In-House Counsel who is charged with providing legal advice and services in regards to legal issues that may arise during the course of standard business practices. This category also includes assistive legal occupations such as paralegals, legal assistants.

COMPUTER SPECIALISTS: Professionals responsible for the computer operations within a company are grouped in this category. Examples of job titles in this category include computer programmers, software engineers, database administrators, computer scientists, systems analysts, and computer support specialists

ARCHITECTURE AND ENGINEERING: Occupations related to architecture, surveying, engineering, and drafting are included in this category. Some of the job titles in this category include electrical and electronic engineers, surveyors, architects, drafters, mechanical engineers, materials engineers, mapping technicians, and civil engineers.

OFFICE AND ADMINISTRATIVE SUPPORT: All clerical-type work is included in this category. These jobs involve the preparing, transcribing, and preserving of written communications and records; collecting accounts; gathering and distributing information; operating office machines and electronic data processing equipment; and distributing mail. Job titles listed in this category include telephone operators, bill and account collectors, customer service representatives, dispatchers, secretaries and administrative assistants, computer operators and clerks (such as payroll, shipping, stock, mail and file).

BUILDING AND GROUNDS CLEANING AND

MAINTENANCE: This category includes occupations involving landscaping, housekeeping, and janitorial services. Job titles found in this category include supervisors of landscaping or housekeeping, janitors, maids, grounds maintenance workers, and pest control workers.

CONSTRUCTION AND EXTRACTION: This category includes construction trades and related occupations. Job titles found in this category include boilermakers, masons (all types), carpenters, construction laborers, electricians, plumbers (and related trades), roofers, sheet metal workers, elevator installers. hazardous materials removal workers, paperhangers, and painters. Paving, surfacing, and tamping equipment operators; drywall and ceiling tile installers; and carpet, floor and tile installers and finishers are also included in this category. First line supervisors, foremen, and helpers in these trades are also grouped in this category...

INSTALLATION, MAINTENANCE AND REPAIR: Occupations involving the installation, maintenance, and repair of equipment are included in this group. Examples of job titles found here are heating, ac, and refrigeration mechanics and installers; telecommunication line installers and repairers; heavy vehicle and mobile equipment service technicians and mechanics; small engine mechanics; security and fire alarm systems installers; electric/electronic repair, industrial, utility and transportation equipment; millwrights; riggers; and manufactured building and mobile home installers. First line supervisors, foremen, and helpers for these jobs are

MATERIAL MOVING WORKERS: The job titles included in this group are Crane and tower operators; dredge, excavating, and lading machine operators; hoist and winch operators; industrial truck and tractor operators; cleaners of vehicles and equipment; laborers and freight, stock, and material movers, hand; machine feeders and offbearers; packers and packagers, hand; pumping station operators; refuse and recyclable material collectors; and miscellaneous material moving workers.

also included in the category.

PRODUCTION WORKERS: The job titles included in this category are chemical production machine setters, operators and tenders; crushing/grinding workers; cutting workers; inspectors, testers sorters, samplers, weighers; precious stone/metal workers; painting workers; cementing/gluing machine operators and tenders; etchers/engravers; molders, shapers and casters except for metal and plastic; and production workers.

White (not of Hispanic Origin)- All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

<u>Black</u>(not of Hispanic Origin)- All persons having origins in any of the Black racial groups of Africa. <u>Hispanic</u>- All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Asian or Pacific Islander- All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes China, India, Japan, Korea, the Philippine Islands, and Samoa.

American Indian or Alaskan Native- All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

BIDDER CONTRACT COMPLIANCE MONITORING REPORT

PART I - Bidder Information

Company Name Street Address City & State Chief Executive	Bidder Federal Employer Identification Number Or Social Security Number
Major Business Activity (brief description)	Bidder Identification (response optional/definitions on page 1) -Bidder is a small contractor. Yes NoBidder is a minority business enterprise Yes No (If yes, check ownership category) Black Hispanic Asian American American Indian/Alaskan Native Iberian Peninsula Individual(s) with a Physical Disability Female
Bidder Parent Company (If any)	- Bidder is certified as above by State of CT Yes_ No_
Other Locations in Ct. (If any)	- DAS Certification Number

PART II - Bidder Nondiscrimination Policies and Procedures

all of your company contracts and purchase orders contain non-discrimination ents as required by Sections 4a-60 & 4a-60a Conn. Gen. Stat.?
No
rou, upon request, provide reasonable accommodation to employees, or unts for employment, who have physical or mental disability? Yes No
s your company have a mandatory retirement age for all employees? No
rour company has 50 or more employees, have you provided at least two (2) hours all harassment training to all of your supervisors? YesNoNA
rour company has apprenticeship programs, do they meet the Affirmative //Equal Employment Opportunity requirements of the apprenticeship standards of Dept. of Labor? YesNoNA
es your company have a written affirmative action Plan? Yes No no, please explain.
here a person in your company who is responsible for equal ment opportunity? Yes No res, give name and phone number.
s 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1

Part III - Bidder Subcontracting Practices

(Page 4)

1. Will the work of this contract include subcontractors or suppliers? Yes No
1a. If yes, please list all subcontractors and suppliers and report if they are a small contractor and/or a minority business enterprise. (defined on page 1 / use additional sheet if necessary)

Yes__ No__

PART IV - Bidder Employment Information Date:

1b. Will the work of this contract require additional subcontractors or suppliers other than those identified in 1a. above?

PART IV - Bidder Ei	mployment	Informati	on		Date	:					
JOB CATEGORY *	OVERALL TOTALS		HITE Hispanic	BLAG (not of H origin)		HISPANIC		ASIAN or PACIFIC ISLANDER		AMERICAN INDIAN or ALASKAN NATIVE	
		Male	Female	Male	Female	Male	Female	Male	Female	male	female
Management											
Business & Financial Ops											
Marketing & Sales											
Legal Occupations											
Computer Specialists											
Architecture/Engineering											
Office & Admin Support											
Bldg/ Grounds Cleaning/Maintenance											
Construction & Extraction											
Installation, Maintenance & Repair											
Material Moving Workers											
Production Occupations											
TOTALS ABOVE											
Total One Year Ago											
FORMAL ON THE JOB TRAINEES (ENTER FIGURES FOR THE SAME CATEGORIES AS ARE SHOWN ABOVE)											
Apprentices											
Trainees											

^{*}NOTE: JOB CATEGORIES CAN BE CHANGED OR ADDED TO (EX. SALES CAN BE ADDED OR REPLACE A CATEGORY NOT USED IN YOUR COMPANY)

PART V - Bidder Hiring and Recruitment Practices					(Page 5)			
Which of the following recruitment sources are used by you? (Check yes or no, and report percent used)				Check (X) any of the below listed requirements that you use as a hiring qualification (X)		3. Describe below any other practices or actions that you take which show that you hire, train, and promote employees without discrimination		
SOURCE	YE S	NO	% of applicants provided by source					
State Employment Service					Work Experience			
Private Employment Agencies					Ability to Speak or Write English			
Schools and Colleges					Written Tests			
Newspaper Advertisement					High School Diploma			
Walk Ins					College Degree			
Present Employees					Union Membership			
Labor Organizations					Personal Recommendation			
Minority/Communit y Organizations					Height or Weight			
Others (please identify)					Car Ownership			
					Arrest Record			
					Wage Garnishments			

Certification (Read this form and check your statements on it CAREFULLY before signing). I certify that the statements made by me on this BIDDER CONTRACT COMPLIANCE

MONITORING REPORT are complete and true to the best of my knowledge and belief, and are made in good faith. I understand that if I knowingly make any misstatements of facts, I am

subject to be declared in non-compliance with Section 4a-60, 4a-60a, and related sections of the CONN. GEN. STAT.

(Signature)	(Title)	(Date Signed)	(Telephone)

Appendix A



SQUIRE, SANDERS & DEMPSEY L.L.P.

MEMORANDUM

Revised IRS Guidelines Applicable to Management Contracts Involving Use of Bond-Financed Facilities

In 1997, the Internal Revenue Service ("IRS") issued final regulations regarding the private business use of tax-exempt bond proceeds and bond-financed facilities. The final regulations generally apply to bonds issued on or after May 16, 1997.¹ The IRS also released Rev. Proc. 97-13 setting forth conditions under which management and other service contracts involving the use of bond-financed facilities will be treated as not giving rise to private business use of such facilities. Rev. Proc. 97-13 is effective for any management contract entered into, materially modified, or extended (other than pursuant to a renewal option) on or after May 16, 1997.²

In July 2001, the IRS released Rev. Proc. 2001-39 modifying and clarifying Rev. Proc. 97-13 effective for any management contract entered into, materially modified, or extended (other than pursuant to a renewal option) on or after July 19, 2001. In addition, an issuer may apply Rev. Proc. 2001-39 to any management contract entered into prior to July 9, 2001.

Management contracts may result in private business use.

Depending on the terms, a contract under which a private person provides management or other services to a governmental unit or a Section 501(c)(3) organization (or a contract that provides for an incentive payment) involving all or a portion of a bond-financed facility (hereinafter referred to as a "management contract") may result in private business use of that facility. Private business use of a bond-financed facility may preclude, or result in the loss of, tax-exempt status for interest on the bonds issued to finance the facility. Regs. § 1.141-3(b)(4)(i).

As under prior rules, a management contract generally will result in private business use if the contract provides for compensation based, in whole or in part, on a share of net profits from the operation of a bond-financed facility. Regs. § 1.141-3(b)(4)(i).

Certain arrangements treated as not giving rise to private business use.

¹ In addition, the final regulations may be applied in whole, or the management contract provisions alone may be applied, to bonds issued before May 16, 1997.

² In addition, an issuer may apply Rev. Proc. 97-13 to any management contract entered into prior to May 16, 1997 without regard to whether the issuer also elects to apply the final regulations provisions relating to management contracts retroactivity to existing bonds.

The final regulations provide that the following types of arrangements generally will <u>not</u> be treated as management contracts that give rise to private business use:

- 1. Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing, or similar services);
- 2. The mere granting of admitting privileges by a hospital to a doctor, even if these privileges are conditioned on the provision of de minimis services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of the hospital facilities;
- 3. A contract to provide for the operation of a facility or system that consists predominantly of public utility property if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider;
- 4. A contract to provide services if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties. Regs. § 1.141-3(b)(4)(iii).

IRS Guidelines Applicable to Management Contracts Rev. Proc. 97-13, as mod. by Rev. Proc. 2001-39 (hereinafter, "Rev. Proc. 97-13")

- 1. Permissible compensation arrangements that do not result in private business use.
 - a. <u>15-year term -- 95% periodic fixed fee</u>. At least 95% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee, and the term of the contract, including all renewal options, does not exceed the lesser of (i) 80% of the reasonably expected useful life of the financed property, and (ii) 15 years. A <u>one-time</u> incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached does not cause the compensation to be other than periodic and fixed if that award is equal to a single, stated dollar amount. Section 5.03(1).

"Periodic fixed fee" means a stated dollar amount for services rendered for a specified period of time, for example, a stated dollar amount per month. The stated dollar amount may automatically increase according to a specified, objective, external standard (such as the Consumer Price Index) that is not linked to the output or efficiency of a facility.

For purposes of the Rev. Proc. 97-13 guidelines, a contract term includes all periods covered by *renewal options*. "Renewal option" means a provision under which the service provider has a legally enforceable right to renew the contract. A provision under which a contract is automatically renewed for one-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

- b. 10-year term -- 80% periodic fixed fee. At least 80% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee, and the term of the contract, including renewal options, does not exceed the lesser of (i) 80% of the reasonably expected useful life of the financed property, and (ii) 10 years. The one-time incentive award exception described above also applies to this type of compensation arrangement. Section 5.03(2).
- 20-year term for certain public utility property. If all of the bond-financed property c. subject to the contract is a facility or system consisting of predominantly public utility property,³ then "20 years" is substituted for "15 years" and "10 years," respectively, for arrangements described above in paragraphs a and b. Section 5.03(3).
- d. 5-year term, cancellable after 3d year -- 50% periodic fixed fee, 100% capitation, or combination of capitation and periodic fixed fee. (i) At least 50% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee, or (ii) all of the compensation is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee, the term of the contract, including all renewal options, does not exceed 5 years, and the contract is terminable without penalty or cause at the end of the third year of the contract term. Section 5.03(4).
 - "Capitation fee" means a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. A capitation fee may include a variable component of up to 20% of the total capitation fee designed to protect the service provider against risks such as catastrophic loss. A fixed periodic amount may include an automatic increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards.
- 3-year term, cancellable after 2d year -- 100% per-unit fee or combination of per-unit e. and periodic fixed fee. All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fixed fee, the term of the contract, including all renewal options, does not exceed 3 years and the contract is terminable by the qualified user on reasonable notice without penalty or cause at the end of the second year of the contract term. Section 5.03(5).
 - "Per-unit fee" means a fee based on a unit of service that is specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program, or the qualified user (i.e., the governmental unit or 501(c)(3) organization). Examples of per-unit fees include a stated dollar amount for

E.g., electrical energy, water, or sewage disposal services, gas or steam through a local distribution system, telephone or other communication services furnished or sold by COMSAT or the transportation of gas or steam by pipeline, if the rates in all cases have been established or approved by a State or political subdivision thereof, an agency or instrumentality of the United States or by a public service or public utility commission or other similar body of any State or political subdivision thereof. Internal Revenue Code § 168(i)(10).

each specified medical procedure performed, car parked, or passenger mile. A fee that is a stated dollar amount specified in the contract does not fail to be a per-unit fee as a result of a provision under which the fee may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards.

f. 2-year term, cancellable after 1st year -- 100% percentage of fees charged or combination of per-unit fee and percentage of revenues or expenses. All the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenues or expenses (but not both), the term of the contract, including renewal options, does not exceed 2 years and the contract is terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the first year of the contract term. This safe harbor applies only to contracts under which the service provider primarily provides services to third parties and management contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of annual gross revenues and expenses. Section 5.03(6).

Penalties for terminating a contract include a limitation on the qualified user's right to compete with the service provider, a requirement that the qualified user purchase equipment, goods, or services from the service provider; and a requirement that the qualified user pay liquidated damages for cancellation of the contract. On the other hand, contract penalties generally do not include a requirement effective on cancellation that the qualified user reimburse the service provider for ordinary and necessary expenses or restrictions that prevent the qualified user from hiring key personnel of the service provider.

A contract termination penalty can be created by another contract between the service provider and the qualified user, such as a loan or guarantee by the service provider, if that contract contains terms that are not customary or arm's-length that could operate to prevent the qualified user from terminating the management contract (for example, provisions under which the other contract terminates if the management contract is terminated or that place substantial restrictions on the selection of a substitute service provider). Section 3.04.

2. For all management contracts, compensation must be reasonable and not based, in whole or in part, on net profits. A management contract must provide for reasonable compensation for services rendered, with no compensation based, in whole or in part, on a share of net profits from the operation of the bond-financed facility. Section 5.02(1). A productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or adjusted gross revenues) or reductions in total expenses (but not both increases in gross or adjusted gross revenues and reduction in total expenses) in any annual period during the term of the contract generally does not cause the compensation to be based on a share of net profits. Section 5.02(3).

Reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties is not by itself treated as compensation to the service provider. Section 5.02(1).

- 3. No circumstances that substantially limit the qualified user's exercise of its contract rights.
 - a. In general, the service provider must have no role or relationship with the qualified user that, in effect, substantially limits the qualified user's ability to exercise its rights, including cancellation rights, under the contract. Section 5.04(1).
 - **b. Safe harbor.** The above described requirement is satisfied if:
 - (i) Not more than 20% of the voting power of the governing body of the qualified user in the aggregate is vested in the service provider and its directors, officers, shareholders and employees;
 - (ii) Overlapping board members do not include the chief executive officers of the service provider or its governing body or the qualified user or its governing body; and
 - (iii) The qualified user and the service provider are not related parties. Section 5.04(2).

Squire, Sanders & Dempsey L.L.P.